

UNITED STATES OF AMERICA  
UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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Vincent Weston #194331 ,

Petitioner,

Case No. 5:06-cv-00206

v.

Honorable Paul L. Maloney

John Prelesnik,

Respondent.

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**ORDER REGARDING LEAVE TO PROCEED *IN FORMA PAUPERIS* ON APPEAL**

This is a habeas corpus action brought by a state prisoner pursuant to 28 U.S.C. § 2254, challenging his July 11, 2001 conviction of second degree murder, assault with intent to murder, assault with intent to commit great bodily harm less than murder, felon in possession of a firearm, and possession of a firearm during the commission of a felony. On March 2, 2010, the Court entered an opinion and order, and judgment dismissing the petition. The Court also denied Petitioner a certificate of appealability. The order/judgment of dismissal followed the Court's *de novo* review of Petitioner's objections to the report and recommendation of the magistrate judge. Petitioner has now filed a notice of appeal and a motion for leave to proceed *in forma pauperis* on appeal (docket # 36).

Sixth Circuit Internal Operating Procedure 5.1 provides that a \$450.00 docketing fee and a \$5.00 filing fee must be paid to the district court when a notice of appeal is filed. A prisoner who is unable to pay the required filing fees may seek leave to appeal in a § 2254 action pursuant to Rule 24(a) of the Federal Rules of Appellate Procedure. *Kincade v. Sparkman*, 117 F.3d 949, 952

(6th Cir. 1997). Petitioner has complied with Rule 24(a), which requires him to file a motion for leave to proceed *in forma pauperis* and an affidavit showing his inability to file the required fees (as prescribed by Form 4 of the Appendix of Forms), his belief that he is entitled to redress, and a statement of the issue he intends to present on appeal. The documents show that Petitioner is able to pay the filing and docket fees required for an appeal. According to the certified copy of Petitioner's prison trust account statement dated March 12, 2010, Petitioner has a current spendable account balance of \$904.68. If Petitioner wishes to proceed with his appeal, he must pay the \$455.00 appellate fee to the Clerk of this Court with 28 days of this order. (It is noted that Petitioner submitted payment of \$5.00 towards the appeal fee on April 22, 2010). The check or other form of payment shall be payable to "Clerk, U.S. District Court" and must indicate the case number in which the payment is made. Accordingly:

IT IS ORDERED that Petitioner's motion for leave to proceed *in forma pauperis* on appeal (docket #36) is DENIED. If Petitioner wishes to proceed with his appeal, he must pay the remainder owing on the \$455.00 appellate fee to the Clerk of this Court with 28 days of this order

Dated: May 10, 2010

/s/ Paul L. Maloney  
Paul L. Maloney  
Chief United States District Judge